



CONSTITUENT ASSEMBLY OF PAKISTAN DEBATES

Wednesday, the 21st October, 1953

OFFICIAL REPORT

CONTENTS

	PAGES
Report of the Basic Principles Committee— <i>Consideration not concluded</i> ...	249—277

PRINTED BY THE MANAGER, GOVERNMENT OF PAKISTAN PRESS, KARACHI
PUBLISHED BY THE MANAGER OF PUBLICATIONS, KARACHI : 1953

Price : Annas 5 or 8d. or 10 cents.

LIST OF ASSEMBLY PUBLICATIONS

- I. Constituent Assembly of Pakistan Debates from August, 1947 onwards up to date. Price Rs. 17-8 or £1-17s.-8d. or \$5-27c.
- II. Constituent Assembly (Legislature) Debates, from February, 1948 onwards up to date. Price Rs. 53-12 or £5-15s.-7d. or \$16-17c.
- III. Constituent Assembly of Pakistan Mubahis from August, 1947 onwards up to date. Price Rs. 17-8 or £1-17s.-8d. or \$5-27c.
- IV. Constituent Assembly (Legislature) Mubahis from February, 1948 onwards up to date. Price Rs. 53-12 or £5-15s.-7d. or \$16-17c.
- V. White Papers—
 1. Conferences of Marketing Officers. Price Rs. 1-6 or 3s. or 41½c.
 2. Proceedings of the International Forestry and Timber Utilization Conference. As. 3 or 5d. or 6c.
 3. Proceedings of the Inter-Dominion Conference. Rs. 1-12 or 3s. 10d. or 53c.
 4. Instruments of Accession and Schedules of the States acceding to Pakistan. As. 9 or 1s. 2½d. or 17c.
 5. Monthly Statistics relating to Joint Stock Companies. As. 10 or 1s. 4d. or 19c.
 6. Trade Agreement between Pakistan and Japan. As. 8 or 1s. 1d. or 15c.
 7. Minutes of the Food Conference. As. 5 or 8d. or 10c.
 8. Report of the Third Session of the Economic Commission for Asia and Far East. As. 4 or 6½d. or 7½c.
 9. Proceedings of the Food and Agriculture (Planning and Development) Conference, 1949. Rs. 1-4 or 2s. 9d. or 38c.
 10. Proceedings of the Tea Conference held at Sylhet. As. 6 or 10d. or 11½c.
 11. Statement on the Water Dispute between West and East Punjab. As. 2 or 3½d. or 6c.
 12. Statement of Industrial Policy. Annas 3 or 5d. or 6c.
 13. The Pak. Air Dakota Crash near Vehari on the 26th November, 1948. Rs. 2-4 or 4s. 11d. or 68c.
 14. Proceedings of the First Meeting of the Council of Industries. As. 5 or 8d. or 10c.
 15. Report of the Pre-conference Meeting on Food and Agriculture Outlook and Programmes in Asia and Far East. As. 10 or 1s. 4d. or 19c.
 16. Proceedings of the Third World Health Assembly. As. 5 or 8d. or 10c.
 17. Correspondence regarding "No-War Declaration" with P. M.'s Statement. Rs. 1-2 or 2s. 5d. or 34c.
 18. International Islamic Conference (Recommendation and their Implementation). As. 5 or 8d. or 10c.
 19. General Agreement on Tariff and Trade. As. 6 or 10d. or 11½c.
 20. Papers relating to the International Labour Organisation (31st Session). As. 5 or 8d. or 10c.
 21. Statement showing the total number of persons employed under the Government of Pakistan belonging to different Provinces, States, etc., of India. As. 5 or 8d. or 10c.
 22. Double (Income) Taxation Agreement between Pakistan and India. As. 5 or 8d. or 10c.
 23. Text of the Resolution of the Security Council and the U. N. Commission for India and Pakistan in regard to Kashmir Dispute. As. 5 or 8d. or 10c.
 24. Trade Agreement between Pakistan and West Germany. As. 5 or 8d. or 10c.
 25. Trade Agreement between Pakistan and India. As. 5 or 8d. or 10c.
 26. Trade Agreement between Pakistan and U. K. Rs. 1-8 or 3s. 3d. or 45c.
 27. Pakistan's Balance of payment. As. 12 or 1s. 7½d. or 23c.
 28. Statement showing the total number of Delegations sent by the Government of Pakistan. Rs. 4-8 or 9s. 8d. or \$1-35c.
 29. Statement showing the total number of Delegations sent out to Foreign countries. Re. 1 or 2s. 2d. or 30c.

These publications are available on sale from the Manager of Publications, Government of Pakistan, Karachi, or from their Agents abroad, whose list is given on the inner side of back cover page.

CONSTITUENT ASSEMBLY OF PAKISTAN

Wednesday, the 21st October, 1953

The Constituent Assembly of Pakistan met in the Assembly Chamber, Karachi, at Ten of the Clock, Mr. President (The Honourable Mr. Tamizuddin Khan) in the Chair

REPORT OF THE BASIC PRINCIPLES COMMITTEE—*Consideration not concluded.*

Mr. President: Further consideration of the following motion moved by the Honourable Mr. Mohammed Ali on the 7th October, 1953:

“That the Report of the Basic Principles Committee be taken into consideration.”

Maulana Mohammad Akram Khan (East Bengal: Muslim): Mr. President, I crave your permission to deliver my speech, seated at my place.

Mr. President: Yes.

Maulana Mohammad Akram Khan: *Sir, as I am a back-bencher, I further beg leave to speak from one of the seats in the front row.

Mr. President: Yes.

Maulana Mohammad Akram Khan then occupied the seat of the Honourable Mr. Mohammed Ali.

Maulana Mohammad Akram Khan:

Al-hamd-o Lillah-e Rab-bil-A'alameen, was-salat-o wasalaam-o ala' Khair-e khalqehi sayyidna Mohammad-in wa A'alehee wa ashabehee ajma-en.

“Praise be to God, the Cherisher and Sustainer of the worlds. Peace and Blessing be on the Prince of the creation, our Lord, Mohammad and all his descendants and companions.”

*Mr. President, I rise with a heavy heart to say that in the Islamic State of Pakistan, which was found on the pledges of the revival and reinforcement of the precepts of Islam, today I have to appear before you at this advanced age and in the feeble condition only to prove that Islam is a true religion. I have not experienced a more painful situation or undergone a greater trial ever before in my life. However, I have got to say something in this connection and now I proceed to present my point of view.

I am reminded of an Urdu couplet which applies with singular aptness to my friend, Prof. Chakraverty:

Chhaid dala teray teeron ne yeh dil khoob kiya;

Khirkian ban gain arman nikalne ke liye.

The arrows shot by you have rent my heart. It is all for the good; because these shafts have provided so many outlets for the yearnings lying suppressed in my heart.

He has said that Islam was meant only for the seventh century and that its teachings could not be acted upon in the present age. He has quoted four verses from the Holy Quran in support of his contention. I shall first repeat these verses one by one and then say something about each of them. I mean to prove before you that the statement of Prof. Chakraverty, which might have sprung either from his ignorance or from his desire to be quick-witted, is completely false and that he has attempted to misinterpret the Holy Quran and heap insults upon Islam.

*English translation of the Urdu speech.

[Maulana Mohammad Akram Khan]

My friend has first mentioned *Sarqa* (theft), the Urdu equivalent for which is *Chori*. He has quoted by way of reference a verse from Sura V. I would like to add that the verse referred to occurs in the Sura called *Maida*. I would further say for your information that this is the last Sura of the Holy Quran. It was revealed to the Holy Prophet (Peace be on him) only two or two and a half months before his demise. This means that the said verse was revealed on the day of the last Haj performed by the Holy Prophet.

Al-yoma akmalt-o lakum deenakum was atmamt-o alaikum ne'mati wa radheat-o lakum-ul Islama deena.

This day have I perfected your religion for you, completed my favour upon you, and have chosen for you Islam as your religion.

So this verse was revealed on the occasion of the last Haj in the month of Zil-Hijja and the Holy Prophet departed on the 12th day of the following Rabi-ul-Awaal. I, therefore, say "This is the last word, the last Commandment of Allah".

It was along with this verse that the following one was revealed to the Holy Prophet in his last days :—

Was-sariqa was-sariqato faqtaoo aid-i-huma jaza-am bima kasaba nakalam min-Allah-e wal-laho Aziz-um Hakim.

This is translated into English as under :—

'As to the thief, male or female, cut off his or her hands, a punishment by way of example from God for their crime and God is Exalted in power.'

At the end of this expression we find the punctuation mark "Jeem" (roughly equivalent to the semi-colon in English) which means that the reader may pause at this point in course of recitation for a breathing space. But the sense remains incomplete. This is also proved by a passage which follows immediately and the translation of which begins with the word 'but' in the English rendering by all translators including Abdullah Yusuf Ali, Moulana Mohammad Ali and Mr. Palmer. If any well-meaning person begins to recite this verse, he is in duty bound to pass on to the latter part of the verse after he has done with the preceding clause. If he fails to do so, he would be committing dishonesty and injustice to the Holy Text and violating the commandment of God. I shall now recite this portion of the verse together with its translation :

Faman taba ba'da zulmihee wa aslaha fa in-nal-haha yatub a'laih-e ; in-nal-Laha Gafoor-ur Rahim.

But if the thief repent after his crime and amend his conduct, God turneth to him in forgiveness ; for God is Oft-forgiving, Most merciful.

In other words, this means that if any body commits theft and subsequently repents his misdeed ; hangs down his head in sincere regret and admits his fault before the Almighty, He would forgive him out of his unbounded mercy. Now, what will you think of a man who recites the first portion of this verse and conveniently omits to read out the second portion which provides for repentance ? After this we come across several provisions bearing on other offences such as dacoity, robbery, dacoity with murder, etc., which are more heinous in their nature than ordinary theft.

I now proceed to quote the 37th verse of the Sura called *Maida*.

Il-lal-lazeena taboo min qablo an taqderoo a'laihim fa'Lamoo in-nul-Laha Ghafoor-ur Raheem.

Except for those who repent before they fall into your power. In that case know that God is Oft-Forgiving, Most Merciful.

You see that provision for repentance has been made even in cases of more serious crimes and the severity of punishment for the different offences varies with the degree of their gravity. The punishment prescribed for robbery and other such crimes is *Yukhrijo minal ardhe*, that is, 'exile from land'. It may be noted that the Muslims have based the punishments for thieves, robbers, etc., on strict principles of justice and the sentence depends on the conditions prevailing in the country and the state of the society inhabiting it. Time permitting, I shall go a little deeper into the details of this question at a later stage. Hazrat Imam Abu Hanifa interprets "*Yukhrijo minal ardhe*", as meaning an exile from the world which amounts to debarring the individual from taking part in the worldly activities and committing him to prison. Theft is obviously a lesser crime than dacoity.

I would now request my brethren as well as my elders not to look at Islam with prejudice but to judge it on its merits. I do not like to repeat the malicious words of the heretic Macaulay quoted by my Bengali friends. The sentence for theft, as laid down in the Indian Penal Code, is imprisonment up to three years or fine or both. This is the punishment prescribed by man. In this connection my friend has also referred to Hamilton. But Hamilton has dismissed the whole subject of *Sarqa* in only five lines although in *Hidaya* theft has been dealt with in greater detail. If Hamilton had incorporated all these details in his translation, the world would have known how many exceptions and conditions have been provided against the cutting off of a thief's hands. The Chapter on *Sarqa* extends over ten pages in *Hidaya*. But the irony of fate is that Hamilton brushes aside all these details saying that no useful purpose would be served as the Penal Code has superseded all the penal laws of the Muslims. I do not want to comment on this argument of Hamilton. He has, however, translated the Chapter on adultery with a detailed account of the sentence prescribed for it in spite of the fact that it has been replaced by the provisions of the Indian Penal Code. But since the stoning to death of the criminal finds a mention in this chapter, Hamilton has, with an understandable motive, taken pains to translate it in all its details. Here I want to impress upon the learned professor that every theft does not amount to *Sarqa*. First comes the establishment of the charge of *Sarqa* as such. Secondly, the theft is to have been committed by an adult before it is ruled as *Sarqa*. A theft committed by a boy of nine or ten years or even twelve or fourteen years of age does not carry the sentence prescribed for the offence of *Sarqa*. Just look at the number of juvenile offenders you have shut up in the Juvenile Jails of your country and judge how far this procedure of yours is proper. You sentence a person to a term of imprisonment only for having stolen a banana or an orange with the result that by the time he comes out of the jail after completing his sentence, he is turned into a confirmed criminal. But with us, there is no punishment for such pilferage. If we take to enforcing the penal laws of Islam in this land, many an alleged offender would come off with clean hands. In addition to this we have to take into account the provision relating to 'Protected place or position' while pronouncing the sentence as is proved by *Ahadis* (the sayings of the Holy Prophet).

We are advised by some to hold fast to the teachings of the Holy Quran and leave off 'Hadis'. This means that we are to give up the Holy Quran first. This question is not germane to the point under discussion and I do not like to dilate upon it at present. I would, however, make a few remarks on this subject in the light of the Holy Quran and *Hadis*.

[Maulana Mohammad Akram Khan]

There are nineteen conditions which require to be fulfilled before the charge of *Sarqa* is established and even if one of these factors remains unproved, the charge fails and the accused is acquitted.

The second condition is that the theft should have been committed in a 'Protected Place' to constitute *Sarqa*. For instance, if anybody steals something from a heap of rice left unsafe in an open ground, without any guard over it, he would not be liable to be sentenced for *Sarqa*. To illustrate this, I can cite a number of elaborate examples covering a wide range of cases but I do not like to waste the precious time of this House. I only propose to show under what conditions a thief's hands are to be cut off and when the saving provisions come into operation.

We have a *Hadis* which is equivalent to the expression *idra-ul hudooda bis-shubhat* 'Benefit of Doubt' in English. The Holy Prophet has expressly prohibited the passing of sentence in cases of doubt. On the other hand, it has been made incumbent on the court, to search out all possible 'excuses' in favour of the accused and to find whether the theft was committed at a protected place or in a protected position. Muslim Jurists have illustrated this by citing an example of a man who breaks into a house, picks up some property, say, a purse, and throws it out to another person standing outside the premises and the latter moves away with the purse in his possession. It is ruled that in this case neither the one who had thrown the purse out nor other who had picked it up and left with it, is liable to any punishment.

The third point is that no minimum limit of the value has been fixed to constitute theft in the present law which puts the theft of a fraction of a pie as well as that of a sum of rupees one and a half lacs in one and the same category. But we have a *Nisab* (fixed minimum) which, according to the *Hanafi Fiqha* and the *Hadis* of the Holy Prophet, is ten *Dirham* in the currency of those days. If any body steals any thing of a value of less than one *Dinar*, he would not lose his hands under the section of *Sarqa*. Now you may easily imagine how many persons would be really found liable to a sentence for *Sarqa* after all such cases have been exempted from the operation of this section. Besides this we have also to take into account certain considerations which have a general bearing on such cases. Imagine a feast where some delicious dishes such as *Shirmal*, *Pulao*, *Qorma*, *Mutanjan*, etc., are being served and a hungry man takes away a little from these delicacies with him. He cannot be charged with and punished for *Sarqa* for the reason that all those eatables were meant for human consumption and were liable to perish within twenty hours. The removal of such eatable does not entail the punishment prescribed for *Sarqa*. Similarly, the removal of fruits from the trees does not constitute a punishable offence, nor is any starving person liable to conviction if he takes away any eatables without the permission of their owner. A similar case of theft occurred in the days of Hazrat Omar (Allah be pleased with him). The accused was asked to explain his action. He admitted the deed, pleading that he was hungry. He was duly let off.

My friend has referred to *Sura-i-Maida* saying that it was revealed at the end of the tenth century. For the information of those who are disposed to flee in fright from the teachings of Islam, I would refer them to a *Hadis* and the sayings of the revered companions of the Holy Prophet purporting that they used to go out in search of the deserving to pay the *Zakat* money to but they could hardly find a single soul poor

enough to be entitled to it. Prosperity, it is further said, reigned supreme and thieving was extinct in the land. So, there never arose any necessity to inflict this punishment upon anybody.

The *Ulama* of those days have also discussed this question and I would like to give an idea of the conditions prevailing at that time. Let me first quote Imam Ibn-i-Qayyim who says "*Ahkam-ush-Sharia't-e tatabaddal-o wal mamlokat-o wal makafaat-o wal ahwal*" that is, the relevancy of the laws of Shariat varies with the change in the time and place of the incident and in the circumstances attendant thereupon. Poverty had disappeared from the land during the lifetime of the Holy Prophet and it is significant that the verse enforcing the penalty for *Sarqa* was not revealed in his early days. It was only when the condition of the Muslim masses had risen above want and when nobody was left with any excuse for resorting to theft that the offence was penalized in the said manner. Five exceptions have been provided under this section and in all other cases *Sarqa* has been treated as a penal offence.

This comparison will show you, Sir, that while a thousand accused are found guilty and convicted under the present section of the Penal Code, hardly five shall be found liable to be punished for *Sarqa* according to the provisions of the Islamic Law. It is up to you now to decide which of the two systems of law is more 'humane' and which of the two types of society is more civilized.

I now leave the subject at this and take up the question of adultery.

Sir, Mr. Chakraverty referred to the punishment for adultery. I put before you just what he has said. He read Sura 24, 11 about the punishment for adultery and fornication. The provisions relating to these two in the Indian Penal Code are obscene in the extreme. As such Islamic Code or for the matter of that any civilized law can never countenance such obnoxious provisions. The terms of adultery or fornication used in modern jurisprudence do not correspond exactly to the word *Zina* in Islamic law. Now I would like to say something about *Zina*. Section 497 of the Indian Penal Code relates to the offence of adultery. This is the law of civilised and honourable people, not of fanatic and backward Muslims. "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man....".

It means that, given consent and connivance, illegal sexual intercourse does not amount to *Zina*. Such is the law of civilized people wherein it is further laid down "that man having such sexual intercourse not amounting to the offence of rape is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years....". It may be five years' rigorous imprisonment or with fine or with both. In such cases the wife shall not be punishable as an abettor.

Adultery in any form is regarded as a sin by us and those who are not self-respecting think otherwise. I do not want to say anything on what has been said about fornication because there is no such thing as fornication in Islamic Law. It would, therefore, be silly to have a separate provision about it. I may, however, add that intercourse committed either by an unmarried man or by an unmarried woman is defined in the Chamber's Twentieth Century. Dictionary as 'unlawful sexual intercourse'. We regard it as a grave sin. It is a grave sin in the eyes of God as well as Islamic Society. Hamilton has translated *Zina* as whoredom, that is, prostitution. In Islamic law unlawful sexual intercourse either between an unmarried man and an unmarried woman or between a married

[Maulana Mohammad Akram Khan]

man and a married woman amounts to *Zina* if the offenders are adults. In the modern law the adulterer is punishable with a term of five years' rigorous imprisonment or with fine or with both. As against this, Islam prescribes hundreds stripes as a punishment for adultery. Which of these two, you can yourself see, is more severe. I do not have any book of Law or 'Case Report or the *Hedayah*' with me at the moment. If I had them with me, I would have read passages from them to illustrate the difference between our case reports and the Western case reports. In Islamic Law when a person is alleged to have committed adultery, the accuser must produce four eye-witnesses who have seen the actual action themselves to prove that the accused person has indulged in sexual intercourse. It is clearly laid down in Islamic Law that only those persons can be witnesses who have seen with their own eyes the actual sexual intercourse. If the evidence is not sufficient to prove the charge, the *Qazi* has the power to dismiss the case and acquit the accused.

If the accused is found guilty, he¹ or she will be punished one hundred stripes. If the charge against him or her is not proved by evidence, the accuser will be punishable with eighty stripes. Besides *Wala taqbal-o Shahadat-un abada-n* that is, he will be disqualified to give evidence for ever. This will give you an idea of the various conditions under which the punishment is to be given to the accused. It has been laid down that a person can be punished for an offence on his confession only if he makes the confession in four different sittings of the court. For instance, if a person confesses his offence relating to murder before a magistrate such confession is not taken to be final. The magistrate lets him go home after his first confession. After sometime, say, ten days, when he comes back and confesses his offence before the magistrate, he is again let off. Afterwards when he comes again to confess the offence in the third sitting of the court, the magistrate explains to him the legal implication of the confession. Thus it may be noted that the sentence can be passed only if the confession is made in four different sittings of the court. Such incidents have come to pass even in the days of the Holy Prophet (Peace be on him). For example the Holy Prophet once inquired of a confessor whether he ever suffered from mental aberration. Further he sent a man to his place to find out the truth about it. It is, therefore, very essential that the confession should be made four times, even when the punishment of hundred stripes had commenced after such confession, he could escape after the first five or ten stripes if he withdrew his confession. My friend will find these provisions on pages 176 and 177 of Hamilton's translation. My friends on the opposition side allege that the Penal Code of Islam consists of a few punishments such as capital punishment for murder. There are only twenty four or twenty five sections relating to punishment on the basis of which they say that the penal law of Islam is not codified. They have further alleged that the Quran is merely a treatise on morals. I appeal to these gentlemen to read any one of the Urdu versions of the Quran that are available at present and understand its spirit. Then and only then there will be justification for raising any objections. They have hardly read a word of the Holy Quran, still they make bold to misinterpret the Holy Book. Here is the rub and the position is intolerable.

In connection with the *Purdah* system my friend has quoted verse 31 of Sura 24 saying that "They should not display their beauty and ornament; that they should draw their veils over their bosoms and not display their beauty, etc., etc." I ask why he has not quoted the verse

in full. What is the remaining portion of this verse. About the seclusion of women within the four walls of their houses, my friend has quoted verse 33 saying: "Stay still in your houses and show not yourself with the ostentation of ignorance."

As far as the second verse is concerned, I am constrained to say that he has chosen to omit the main point; the verse begins with the words: '*Ya Nisa-un-Nabi-ye*' that is, 'consorts of the Prophet'. You know that definite provisions have been laid down for the consorts of the Prophet, the *Hashmites*, descendants of the Prophet and the sacred wives of the Holy Prophet. The provisions contained in the verse are quite definite and particularly meant for the consorts of the Prophets. He has chosen to omit the words, 'consorts of the Prophet' from the English version in an attempt to make it applicable to Muslim women in general. Thus you can see that he has torn every thing off its context and has let fly his shafts of criticism indiscriminately.

Khain kidhar ki chot, bachain kidher ki chot.

I do not know as to how many of such absurd remarks of his I should try to rebut.

As far as the other verse is concerned, the Quran says—it is applicable to men only:

Qul lil-momineen-a yaghudhdhu min absarehim wa yahfazoo furoojahum. Zalika azka lakum. In-nal-Laha khabeerun bema yasna'oon.

Say to the Believing men that they should lower their gaze and guard their modesty; that will make for greater purity for them and God is well-acquainted with what they do.

In the second verse it is laid down:

"Say to the believing women that they should lower their gaze and guard their modesty."

I ask you that if women were to be confined within their houses, why have believing men been asked to lower their gaze in the way and before whom? The Holy Quran has enjoined upon believing women not to display their beauty. The words of the Holy Quran twisted by Prof. Chakraverty have been translated by Allama Abdullah Yousuf Ali as 'dazzling display'. Could any self-respecting man allow his women folk to go about in bazars and make a dazzling display of their beauty. In this connection the Professor has thrown a challenge to my esteemed friend Mr. Brohi.

As for me, I can very well meet this challenge, though I am an humble servant of Islam! Muslims have been meeting such challenges for the last 1,400 years, are meeting them now and shall meet them in future. Your threat can have no effect. Muslims cannot get frightened or go astray. He has further alleged that in the *Harem Sharif* one sect of Muslims would not offer prayers with those belonging to another sect. In reply to this I would relate a personal incident. In 1929, I stayed in *Harem Sharif* for four and a half months. I would like to relate few things about it. Every person there shows great regard for women. Even children show them much respect, so much so that women do not have to observe *purdah*. While pilgrims dressed in *Ahram* pray, women have to keep their faces uncovered, for to cover them would be a sin. I do not believe in the Islam of Mr. Nishtar. I believe in the Islam of God. I believe in the Holy Quran and the Sunnah. Ibn-i-Saud came to the throne in 1926 and I visited Arabia in 1929. During my visit I asked a number of Arabs as to how many persons had been punished with the cutting off of their hands for theft. I was told that during the period of five years from 1924 to 1929 the hands of only five

[Maulana Mohammad Akram Khan]

or six persons had been cut off. This punishment was prescribed to act as a deterrent to others and the result was that thieving disappeared from the land of Arabia. As against this hundreds and thousands of people were thrown into jails for theft here but they came out of jails as trained pick-pockets. It is our misfortune that Muslims every where have fallen from the high ideals of Islam.

*Taaq se shisha gira kya, uske dil se ham gire,
Ek shakista ki sada hai is siray se us siray.*

The mirror has fallen from its niche as have we fallen from grace and the sound of the breaking glass fills the whole space from end to end.

Now that we are trying to frame an Islamic constitution why should my friend be angry? It was in 1929 that the late Syed Ghulam Bhik Nairang and I went to perform Haj. We saw that prayers were offered in the *Harem Sharif* in one and the same congregation. We saw Hanafis, Shaafais, Hambalis, and Malakis all offering prayers in one and the same congregation led by one Imam with the exception that *Malikis* offered prayers with their hands down. We have one deity (Allah) as against those who have several deities. As usual Ibn-i-Saud also came and joined us in performing the ceremony and I saw that he was dressed only in one *Kurta*. He came out of the car, dressed in *Ahram* and joined us in going round the Holy Ka'ba. According to the procedure prevalent in the *Harem Sharif* bedouin holding a bamboo stick in his hand and called a *Khadim* is entrusted with the task of conducting the pilgrims round the Holy Ka'ba in an orderly way. Once the *Khadim* pushed aside a bedouin going round with us asking him to keep away from the King. Next time the *Khadim* pushed that bedouin aside he at once retorted "This place is no royal place; it is the place of God's worship". Ibn-i-Saud promptly remarked "surely, we are all brethren". I have seen all this with my own eyes. I may, however, submit that at this old age I find it hard to make a long speech but as the situation demanded that I should quote certain commandments of the Holy Quran I had to make these observations. I request all my Muslim brethren to read the Holy Quran. This, I am sure, would help you in resolving all your problems. I have spent fifty years of my life in fighting against Mullahs in the interest of the nation. I am now on the point of death.

My last advice to Sardar Abdur Rab Khan Nishtar, Pirzada Abdus Sattar and Mr. Noon is that they should read the Holy Quran. They would then find all their troubles magically disappearing. It will all be plain sailing and halcyon sky.

I am very sorry to say that much has been said on the floor of this House against the Sunnah. I need not mention criticism made outside this House. I want to be brief. I would say only this to those who refuse to believe in *Hadis* and follow the Quran alone, and would also ask them a question or rather challenge them to answer whether they can provide any evidence to prove that their Quran is really the same Quran which was revealed to the Prophet Mohammad, son of Abdullah without the help of *Hadis*. This fact can only be proved by a reference to *Hadis* forsaking which you can neither prove that Prophet Mohammad, son of Abdullah was the recipient of the Quran nor that a person born 1,400 years back was the same person who claimed to be a prophet and whom we believe to be the Prophet Mohammad, son of Abdullah. People say that our prophet is a historical personality. But, Sir, unaided by *Hadis* who can prove this proposition. Nor is it possible to

abandon the Quran and to stick to *Hadis* alone. If any believer in the Quran acts upon a *Hadis* that opposes a Quranic injunction he will surely be acting wrongly. In case of contradiction between the Quran and the *Hadis*, the Quranic injunction will prevail.

Sardar Abdur Rab Khan Nishtar (Punjab : Muslim) : A *Hadis* that contradicts the Quran cannot be a genuine one.

Maulana Mohammad Akram Khan : *Certainly such a *Hadis* cannot be genuine. If we care to collect the books on *Hadis* such as their commentaries or the principles of commenting, etc., we can surely do it ; all material is available. You can study it. But the difficulty is that although we have all this treasure in our own home yet we do not care to make use of it. That is the tragedy with us.

We should study the Holy Quran and not allow ourselves to be misled by any one. My friends sitting opposite are one and all unbelievers.

Our non-Muslim brethren admit that Islam had to contend against Christianity from its very advent. It was up against bitter opposition during the crusades. Compared to that our friends' opposition to Islam is nothing. Insignificant opposition cannot produce significant results.

The books that have already been written against Islam are so numerous that even this large room cannot hold them. What more can the present critics say ?

Na Khanjar uthega na talwar un se

Woh bazoo mere azma'i huai hain.

Their arms can neither use a dagger nor wield a sword effectively. I have already had an experience of them.

Mr. Fazlur Rahman (East Bengal : Muslim) : †Mr. President, Sir, in order to appreciate the full significance of the recommendations in the Basic Principles Committee Report, it is necessary for me to give you the background and the objective of the Pakistan movement. The object of the movement was not the separation of a few Provinces in the sub-continent simply to create a new State based on the Western conception of nationalism. Had this been the object, it would have been a folly to demand partition, which brought untold miseries to millions of families. These terrible miseries were not suffered merely for the sake of creating another National State. Will that not mean an admission that the Muslim League was playing a colossal fraud on the Muslims of the sub-continent ? Who can deny the fact the Muslims of the minority provinces are the greatest sufferers, that their life has been entirely uprooted and that they are facing hardships both in this country and also in the land of their birth ? Why did they join us in our struggle for Pakistan ? Were they so foolish as not to realise that partition would make them weaker still ? No, they joined us in our struggle and fought shoulder to shoulder along with us the battle of Pakistan, because we wanted to establish the new State on the basis of Islamic principles and no sacrifice was considered to be too great for that high ideal. We were told a thousand times and one by the Quaid-i-Azam, by his colleagues in the Muslim League and, indeed, by every one who sympathised with the movement of Pakistan, that a separate homeland for the Muslims of the sub-continent was essential, because there alone could they live in accordance with the teachings of their faith and there alone could they create a society based on the Islamic concepts of life and from where they could give to the world a way of life which alone could ensure peace and happiness. For the fulfilment of these ideals we must have an Islamic State, a State which is fundamentally different from the

† English translation of the Urdu speech.

[Mr. Fazlur Rahman]

Western concepts of policy, whether they belong to the domain of democracy or to Communism. The Islamic State, not being purely materialistic in its outlook is naturally bound by certain moral and spiritual considerations of a fundamental character and it is this aspect which stops it from degenerating into selfish nationalism of the West, which has failed to contribute to the growth of peace and human happiness. Islam, on the other hand, aims at establishing peace; in fact, "Islam" means 'peace'. We hold, and we are anxious to show by example, that the ideology of Islam alone can bring peace to the afflicted humanity. Let those whose ideas about Islam have been nurtured on prejudices, born of misunderstandings and faulty interpretations, try to study and understand the spirit of our ideals in an objective manner. The very concept of social justice was revolutionised by the Quranic verse which clearly laid down that the division of humanity into tribes and families was for the purpose of identification and that superiority was to be determined by Piety alone. On the occasion of the conquest of Mecca—the biggest of his political triumphs—when the Prophet delivered his historic sermon, he commented upon this and said—

"O Quraish, God has ended the pride of the days of ignorance and the superiority of descent."

Again, two years later, he further clarified this vital principle of life in these words—

"O people, all of you have the same God, and the same father. And an Arab is not superior to an *Ajmi*, nor is an *Ajmi* superior to an Arab; red is not superior to black and black is not superior to red, except for *taqwa*, i.e., goodness and piety."

Could any system condemn more emphatically the evils of racial discrimination or colour prejudices? Is this not an adequate guarantee for social justice and fundamental rights for all? Unlike a secular State, where the majority violates even the law of the Constitution because it has nothing to fear, we Muslims shall always deem it a sin to disobey this unequivocal command of God and the Prophet.

Pakistan has been established as a result of the efforts of the Muslim League under the guidance of the Quaid-i-Azam. On numerous occasions, he emphasized that it would be an Islamic State which in the present set-up of things cannot but be a republic whose Constitution is based on Islamic ideology, which does not recognise any geographical, racial and linguistic barriers. But it is to be pitied that we had hardly won our independence that local patriotism nurtured by geographical considerations began to raise its head, and in course of time became so strong that in the formulation of the basic principles of the constitution, concessions had to be made in its favour. The first concession was made when the Objectives Resolution declared that Pakistan would be a Federation. Federation which is derived from *feedus* meaning treaty or agreement is to use Montesquieus words, "a convention by which several petty states agree to become members of a larger one which they intend to establish". In other words these petty states surrender part of their sovereignty to create a new sovereign state. But Pakistan when established consisted of administrative units known as provinces which were not independent sovereign states. Therefore the only meaning of federation in the context of the Objectives Resolution could be a federation of administrative units and not of sovereign entities. Unfortunately the use of the term 'federation' strengthened the feelings of local patriotism referred to by me earlier and led to further concessions. The second vital concession was the acceptance in the recommendations

of Basic Principles Committee Report of the concept of East and West and the principle of parity between them. But these concessions as was natural did not satisfy the local patriots and a crisis developed which threatened the very solidarity of Pakistan. A further concession had to be made to the demands of local patriotism in the form of inter-dependence of the East and West wings in the agreed formula. The League Parliamentary party, however, have agreed to these concessions because without them progress in constitution-making would have become impossible. No doubt these concessions are inimical to the development of our State as an ideological State in accordance with the principles that I have mentioned earlier. These compromises are, therefore, to be retained as dictated by present necessity and for this reason it is all the more necessary that our constitution should be based on Islamic principles, so that the evil effects of these concessions are neutralised. Provisions shall have to be made which shall keep the *Millat* together and enable it to fight the forces of separatism and disruption.

I feel that the recommendations made in the Basic Principles Committee Report with regard to the incorporation of Islamic principles are not adequate and they have to be amended in the light of the following suggestions :

Firstly, that the character of the State should be declared unequivocally in the Constitution, and the State should be named as Islamic Republic of Pakistan, so that there might not be any mistake or doubt in the minds of the framers of the policy and its administrators as to the type and character of the policy of the State.

Secondly, that Islam should be declared as the State religion of Pakistan. This is very important and extremely necessary, because if we include it in our Constitution it will put the responsibility on the Government to promote the ideology on which we are basing our Constitution. Besides the fact that there are modern States both in the East and the West where the State religion has been mentioned in the Constitution I would like to emphasize that this provision would in no way affect the freedom of the non-Muslims in the State. No other religion of the world, in fact no political or social system recognises the principle of the freedom of thought, opinion and deed more emphatically than Islam. The Quran definitely lays down in 2: 256 no compulsion in faith. I would ask my non-Muslim brethren to read the Prophet's Charter to the Christians of Najran (*Spirit of Islam*, p. 273) or his agreement with the Jews of Medina (*Spirit of Islam*, p. 58-59) or Umar's *firman* the people of Elilia (*Al-Farooq*) and they will know that in the days of our glory and success we preached and practised principles which the great powers of today would do well to follow. If they shake off their prejudices and then read our history in a purely objective spirit—they will find that in our wars we were never aggressive—in our administration never intolerant and in our justice never partial. Take the case of this sub-continent. Leaving aside the cases of individual despots who sometimes acted irresponsibly, you can never quote instances of the State policy being intolerant or State interference in matters of religion. During the long span of a thousand years no one can point out a single case of forcible conversion by the Government. Shahu, the grand son of the Maratharaja Shivaji, came to the court of the much-maligned Aurangzeb as a child and left it as a grown-up man after 20 years, but never was an attempt made to change his faith. In political and social life we gave to all the countries where we ruled—the caste-ridden India included—a concept of social justice which has never been equalled. Need I remind the non-Muslim members of the

[Mr. Fazlur Rahman]

House that the Prime Minister of Muhammad bin Qasim was a Brahmin, that one of the highest commanders of Sultan Mahmud of Ghazni was a Hindu named Tilak, that the Commander of the Mughal forces who defeated Shivaji and sent him to the court of Aurangzeb was a Rajput chief—Jai Singh. These are only a few cases casually picked up from amongst the thousands of Hindu courtiers, noblemen, high state officials in the machinery of our Government.

I would now like to refer to the recommendation in the Basic Principles Committee Report that no Legislature should enact any law which is repugnant to the Holy Quran and the Sunnah. For the implementation of this provision a special procedure has been suggested in paras 5 and 6 and the Courts as such have not been given any right or power to judge the validity of a law on this ground. This special procedure has not received support from any section of the people. I would, therefore, suggest that this be dropped and the Federal Court is given necessary jurisdiction to judge the validity of a law on this ground. If the Assembly accepts this suggestion we shall bring about a revolution with far-reaching effects. The Islamic system of Law has been one of the most dynamic systems which kept on expanding and progressing according to the growing needs of civilization. The principles of *Qiyas*, *ijma* and *ijtihad* were a guarantee for the dynamic character of our law.

The safest and most practicable procedure for interpreting law and finally judging its validity on the ground mentioned in paragraph 3 of the Report would be to entrust the highest Court of Judicature in the country with necessary powers in this connection. This procedure will not only meet the requirements of the modern conditions of life, but will save our society from the baneful effects of the implications of differences in individual and group opinions on the one hand and the idiosyncracies of scholars on the other. The Islamic code of life is for all times and for all ages. For the several centuries it had met the demands of a growing civilization. No doubt for sometime the door of *ijtihad* has remained closed, but this was adopted as the natural remedy of what we may call 'anarchism' in *ijtihad*. But it was fortunate that the great thinker Shah Waliullah of Delhi as early as the first half of the 18th Century established that the door of *ijtihad* should be reopened both with regard to questions that had been decided earlier as well as questions relating to new problems. Through this process of *Ijtihad* and judicial interpretation we shall bring about a mighty and great transformation in the life and society of Pakistan. It was this revolution to which I have referred earlier. Another recommendation that needs some clarification is that the Head of the State should be a Muslim. This is in no way derogatory, as some people think, to the principles of democracy and does not interfere with the rights of the minorities. The constitutions of the several European and Muslim States require that the Head of the State should belong to a particular church or religion. Because of this fact no one has ever questioned the democratic character of such a State. There is no reason why Pakistan should be characterised as undemocratic for this provision. Besides Head of the State is a symbol of the ideology for which our State stands. This being an Islamic ideology it is natural that the Head of the State should be a Muslim. There are certain important functions like declaration of *Jihad* and granting clemency which can be exercised in an Islamic State only by the Head of the State who must be a Muslim. The Head of the State being a constitutional head will have hardly any other powers and, therefore, the rights of the minorities will

not be affected by this provision. On the other hand, the Prime Minister who will have all real powers can be a non-Muslim too. Thus the minorities will have equal opportunities with the majority to exercise real powers in the State.

I may add a few more words about the position and rights of minorities. Some references have already been made to their position in my earlier remarks but I would like to emphasise that minorities in an Islamic State would be better off than they are in a secular democratic State. In the latter case they are at the mercy of the majority. Let me put a straightforward question. How far has the secular government of Bharat succeeded in safeguarding the interests of the Muslim minority? The facts are too well-known to be repeated here. No commentary on their pitiable condition in that country can be more convincing than the ceaseless flow of the *Muhajirin* into Pakistan. But I assure you it would be otherwise in an Islamic State. Here the minorities would be like a trust with the *Ummat* or the Muslim majority. Their life, their honour, their property, their freedom and their rights and privileges—all have to be safeguarded in a most scrupulous manner. How could the Muslim majority of an Islamic State encroach upon the rights of the minorities in the face of the emphatic words of the Prophet: "On the day of Judgment I shall be the enemy of the person who causes injury to *Dhimmis*."

I would like to tell those who have doubts about the liberal and progressive character of the principles of Islamic statecraft that they should not be misled by the writings and views of persons who have always looked at Islam through the opaque glasses of obscurantism and ignorance. Shake off your prejudices and pre-conceived notions and you will see the light. Judge the principles of Islam on their merit and not in the light of the actions of irresponsible persons who have exploited it in their interests. Give them a trial and you will find that you have attained the means of establishing peace, prosperity and happiness for which Islam stands.

His Excellency Dr. Omar Hayat Malik (Punjab : Muslim) : *Mr. President, Sir, the Basic Principles Committee Report which we are discussing is the blue-print of our future constitution. In framing a constitution there is one important fact which should be always borne in mind and it is that a constitution binds the future generations to our wishes much more than an ordinary law does. The ordinary law can be changed easily but a constitution is always so designed that its change is a difficult matter. Therefore, by framing a constitution we are subjecting the future generations, for centuries we hope, to our wishes and, therefore, in undertaking our task we must be conscious of our responsibility to the future and should be able to protect our future and be able to forecast events of the future so that what we lay down now in the constitution can prove suitable not only for the present but also for the time to come. We should in any case, be free when making a constitution, from considerations of persons and parties—persons change and parties change—they are not eternal but transient. Similarly ideas of progress and reaction—they also change. Fashions and ideas change; climates of political opinions change. What is supposed to be fashionable in political thought today, may not be fashionable fifty years later and so on. Therefore, Sir, we must not be influenced only by the present when we are framing our constitution; we have to act like statesmen and have to pay due regard to the time to come. So, the quality of statesmanship must be present always amongst

*Speech not corrected by the Honourable Member.

[His Excellency Dr. Omar Hayat Malik]

constitution-makers, because statemanship does mean the capacity for forecasting future events and making provisions in anticipation of those events.

Now, Sir, this was rather abstract but I thought it necessary to point it out at the very beginning.

I shall now deal with some of the salient features of the Basic Principles Committee Report. It is impossible to deal with all the issues that are raised in the report and for the sake of brevity I shall confine myself only to some of the features. One of the most prominent features of the report is that our constitution will have a federal structure. Now a federal structure in Pakistan was inevitable in view of the fact that the two parts of Pakistan—the eastern part and the western part—are separated by a distance of 1,200 miles by land and about 3,000 miles by sea. A unitary State under these conditions was perhaps unimaginable. But it is not so clear why a closer co-ordination and a closer unity in the western zone was not possible. The agreed formula—which was announced in the House—has been welcomed by a large majority of our people. I also joined in that welcome because I realise that politics is the art of the possible and, therefore, we should not yearn after ideal solutions but after practical solutions which will work. Well, Sir, I am glad that the solution has been found at least for serving as a basis for framing the constitution. But what I want to point out about this solution is that there is a regret, a lingering regret in my mind. It may, be a lingering regret in the minds of many others that we should have risen, if we could to a higher level of statemanship and insured a higher level of unity, in the various parts of our country. Perhaps that could not be done at present. I hope it will be possible to do so in the future. May I point out, Sir, in a large number of cases where federal States have arisen they all became federal because the States, the units or the Provinces, preceded the bigger State as sovereign entities. If you consider the case of United States of America, of Australia or Canada you will see that first came the sovereign States who were independent in every sense of the word and then came a federation because the individual States thought that it was to their advantage to have some sort of unity and thus decided to form a federation. So they came together and they parted with some of their powers which they gave to the federation and thus this federated State or States arose. But in our case we cannot say that our Provinces or units were really sovereign States and therefore it was necessary to keep them as they are in order to have a federation. It is well-known that the Provinces were matters of administrative convenience in the eyes of our foreign rulers and therefore the strong attachment that has now been explained in sticking to the existence of the units or the Provinces as separate States in the federation is a little to be deplored.

Before I leave this subject I would point out just one instance, a parallel instance, of a country in this connection and that is Indonesia. When the Dutch left Indonesia four years ago and Indonesia became independent it was divided for a year or so before it was left by the Dutch into 11 different States. But as soon as Indonesia became independent then within a year they abolished all these States and converted the federation into a unitary State, almost with a magic wand, the Assembly, the Ministry and other paraphernalia in the separate States in the different units, disappeared and a unitary State was forged because Indonesians believed that although their country consists of thousands of islands, separated by vast stretches of water, still a unitary State was

more favourable to their interests than a federation which was a federation consisting of 11 different States, as created by their foreign rulers, not in the interest of Indonesia but for certain other purpose. I wish, Sir, just a lingering wish and regret, that we also could have risen to a higher level of unity and created at least one unit in the West. Nevertheless I again repeat that I welcome the formula which will now serve as the basis of our constitution because at least it opens the way for framing the constitution and making our State a worthy nation.

The second important feature of the Basic Principles Committee Report on which I wish to make a number of comments is the parliamentary system of Government. The system of Government which bases itself on the responsibility of Governments to Parliaments is called the Parliamentary system of Government. There are, however, some anomalies in the report which make it doubtful whether the Basic Principles Committee really wants a parliamentary system. I need not point them out here. But at the same time on the whole the report intends that our State should be based on the Parliamentary system. Now, Sir, this is a well-known system and is being practised in very important countries like the United Kingdom, Australia, Canada, and so on. But we should think calmly and coolly and judge whether this system is suitable to our conditions. I may point out that something that works, in a certain environment does not necessarily work in another environment with the same efficacy. I have had opportunities of exchanging ideas with parliamentarians of different countries of the British Commonwealth, as you know, during the conferences held by the Commonwealth Parliamentary Association and, although I cannot say it was the unanimous—that almost unanimous—opinion of parliamentarians from those British countries that the parliamentary system of Government was a success, more or less, in British countries, but that had failed, or partially failed, in other countries. One of the very prominent members of the British delegation, actually a Minister in the British Cabinet, told me once that the parliamentary system is not meant for export.....

Shri Dharendra Nath Dutta (East Bengal : General) : What ?

His Excellency Dr. Omar Hayat Malik : Export. It is the indigenous product meant only for British consumption. You know, Sir, and the members of this House know that in European countries which are highly developed in many ways, politically and materially, the parliamentary system is far from being a success. At present the cases of France and Italy at once jump to one's mind. France, a country of high culture, of high civilization, of long history, great achievement in art, literature, science, politics, war, etc., is now in a desperate condition because it does not know how to run the country on the parliamentary system. Governments come and Governments go. Since the war during the period of 6, 7 or 8 years I do not know exactly but a dozen or more Governments have changed there and the country is in desperate straits. I have had the occasion recently of talking to French statesmen including Ministers and ambassadors and they all told me that they ascribe all their troubles, they all ascribe their present weakness to the faults of their parliamentary system. In Italy again the same phenomenon has appeared and the Italian polity is weak because of the working of the parliamentary system. Sir, examples could be multiplied. Now, Sir, we should think how far our genius, our conditions etc. are suitable for this system, and if we decide ultimately as we seem to have decided, to adopt this system, at least we could take some precautions in advance to mitigate the difficulties that might arise in future. The difficulty in parliamentary system arises from the multiplication of parties—of

[His Excellency Dr. Omar Hayat Malik]

political parties. In Great Britain, Canada, Australia, etc., the system has worked better because there were only two parties or possibly some times three but the third party was a minor party. England has been particularly lucky in this matter because they have always had two parties, two political parties almost throughout. First were the Conservatives and the Liberals and then a third Party came, the Labour Party but though insignificant and then, when Labour began to grow into a full-fledged party, then the Liberals were obliging enough to disappear and have practically disappeared and thus there were left again two parties in the country, Conservatives and Labour. But in countries where there are more parties, the working of the system becomes extremely difficult because Governments become unstable. You will agree with me, and the members will agree with me, that the chief characteristic of the Government, the most important one, is the stability of the Government. If we have more parties, then the working of that system makes the Governments unstable. Stability is a very difficult thing to obtain unless the number of parties is smaller. As a matter of fact, there are three conditions for ensuring stability: firstly that the number of parties must be two; secondly, that the two parties must be agreed upon the fundamental basis of the State; and thirdly they should have certain amount of fairness among the people in the political circle so that the parliamentary game can be played honestly and fairly. These are three conditions for making a parliamentary system work properly. I would request you to see how far these conditions obtain in our country and are likely to obtain in our country in the future. At present, we are lucky that we have got only two parties, viz., the Muslim League and the Congress. Will this state of thing continue for ever? I have grave doubts whether the phenomenon of many parties will not appear in our country also in the future.

Regarding the other points, as to the capacity to play the game fairly, I hope we will rise upto it, but the events that have happened in the provinces, most of the provinces, at least, do not offer very bright prospect. So, Sir, I think that this is rather a sort of experiment for us to adopt a parliamentary system of Government and if we are going to adopt it, we must at least make some provisions against the difficulties in advance. I might mention here some of the provisions made in other countries of which I have some experience.

In Germany, for instance, same trouble has been going on and they have recently passed a law, a new election law, which lays down that the party that obtains less than 5 per cent. of the total number of votes, shall have no seat in Parliament although some seats may be due to it. Well, this is a method, a practical method, of avoiding certain small parties.

In Italy even a more drastic and perhaps doubtful measure has been adopted and that is that if a certain party forming a coalition obtains 51 per cent. of the votes, 51 per cent. of the votes of the electorates, then, their party as coalition will automatically get a bonus and that bonus would be 14 per cent, i.e., it will have seats not on the basis of 51 per cent. but on the basis of 65 per cent. of the votes. Now, the theoretical people and orthodox people and democratic people do object to it that this is a very wrong way of getting seats in the Parliament. But I want to point out to what desperate remedies some countries have been forced to come in order to avoid the existence of many parties which made the working of parliamentary system impossible.

Now, I might mention the case of France in this connection. Mons. Rene, the ex-Prime Minister of France when he was recently asked during the last governmental crisis of France, to form a Government, he said, I

may form the Government but on one condition and that condition is that the Constitution should be changed in one respect, only one respect, and that is that if a parliament dismisses two Governments in succession within a period of 18 months, then the Parliament shall be necessarily dissolved. This was what M. Rene demanded as a condition precedent for accepting the task of forming a Government. Well, this was refused, because the gentlemen belonging to different political parties in France—and it is not only in France but everywhere naturally—have to guard their own interests, their own party interests and they are not going to yield to such a proposal. The proposal was then rejected and the conditions in France lingered on and lingered till ultimately a Government was formed. I hope these difficulties will not rise again in France with which she was faced, but it seems hardly possible when the causes are there, the consequences will not appear.

Now, Sir, I do not wish to make any categorical proposal in this respect, but I would say that we should, if we adopt parliamentary system ultimately, make some provision similar to what I have mentioned so as to prevent the rise of many political parties which will make Governments unstable, and when Governments are unstable, they are also weak, inefficient and not quite honest. Unstable Governments tend to become also dishonest along with the individuals. So, I submit it for your consideration that if we adopt parliamentary system, we might consider the advisability of adopting some sort of safeguards of the type I have mentioned in connection with France, Italy and Germany.

Now, Sir, the third important feature and the most important feature, if I may say so, of the Report is its Islamic character. A great deal has been said in the Press and on the platform, in this House, in the Lobbies, in party meetings, on this question and arguments for and against have been pretty nearly exhaustive. I, therefore, will not take the time of the House in going into the details and repeating the arguments that have already been given, but a few things I would like to say. The first thing is that as people have said in other place, it is not difficult to understand what an Islamic State means. Many people have doubts and they ask what an Islamic State means. It is rather easy to understand what an Islamic State is. An Islamic State is simply a State that uses its power, its resources, its influence for promoting the cause of Islam inside and outside the country. As an individual, a Muslim, I should use all my capacity, my power and my resources to obey the commandments of God, i.e., propagating the ideas of Islam and to serve the cause of Islam. A state is a collective and representative of individuals and if it is an Islamic State, well, then it should use all the power it has for promoting the cause of Islam in every way. Let me point out, use that power in accordance again with the principles of Islam, not in its own arbitrary fashion. I would not say that an Islamic State can start forcibly converting non-Muslims to Islam by using its power because that is expressly forbidden by Islam itself. The power of the Islamic State which should be used if it is Islamic for promoting the cause of Islam in all its aspects should be used in accord again with the principles of Islam.

Now the question is : why we want to have an Islamic State in this country ? Sir, one reason which has been given on the floor of this House and a very important reason is that we got Pakistan on the plea that we shall make an Islamic State. The words that might have been used and these were the words that hundred million Muslims of undivided India want an Islamic State so that they may be able to live the Islamic way of life. There is no doubt about it. The plea was this. Similarly, Sir, all the leaders from the Quaid-i-Azam downward said the same thing. Well, I cannot go in detail on this point but let me take up certain purely

[His Excellency Dr. Omar Hayat Malik]

mundane considerations. First of all is there any doubt that at least 90 per cent. of the Muslims of this country if not 99 per cent. want to have an Islamic State? If there is any doubt about it, the matter should be put to a referendum and let us then see what the Muslims have to say. So, Sir, if it is true and I believe it is true even those who are opposing Islamic State now that this is true that an overwhelming majority of the people of this country want to have an Islamic State. Well, is it not the demand of democracy then? If democracy has any meaning, it should mean that when an overwhelming majority of the people of a country want to order their State in a certain fashion, that must be given effect to. You cannot have democracy like this that you accept it whenever it suits you and you reject it whenever it does not suit you. This argument is purely secular one. I will not mention the argument of faith. Of course, as a matter of faith, every Muslim must wish to have an Islamic State because the Quran is replete with injunctions for all Muslims to work for the building up of an Islamic State. I will not quote the Aits. Now, there is another question about it. From a purely democratic consideration, whenever an overwhelming majority of the people want a certain type of State, have the minorities the right, however strong they may be, to check the majority from having its rights? For instance, there are forty million Muslims. Now are the forty million Muslims in India content with the building up of a secular State? Do they want secular State. Do they also not want an Islamic State? Now if the State is secular; if it is a democratic principle, they have to grow in a secular State. That is all. Well, on the other hand, here is also the same thing. If the overwhelming majority wants it, the minority must with good grace, have an understanding for the ideals and wishes of their fellow-citizens and to submit to their wishes. Then, Sir, another point that I would like to mention is: what is the basis of our State? Why have we come together? Why have we separated from India? At the most there were two reasons. I would be quite frank here. One is positive which I have already mentioned and that was the Muslims wanted to live an Islamic way of life and order their polity according to Islamic principles and the second one is the element of fear. I am quite frank here also. They felt that unless they separated and built a separate State for them, their future was not very bright and now also there is an element of fear which holds us together; fear of external aggression. Fear is quite a potent cause in politics and it exists. We had fear that Pakistan is not out of danger and therefore, in order to save our existence, we must stick together. Now all that I have said already is quite an important factor in bringing the people together but it is only a negative factor and can in future cease to have the same effect which it has now. Therefore, I attach much more importance to the positive factor, namely, the factor of Islamic unity amongst the Muslim people, and if we do not make an Islamic State of Pakistan and the positive factor disappears, then I submit, Sir, that the foundation of the state will disappear. Then I might point out, Sir, as it has been already done by many that between the different peoples of Pakistan—the people living in different parts—there is no unity throughout, I say not throughout, on the basis of geography, race or language. In fact all the factors of disunity are there and the only solvent for these differences is religion and a very powerful solvent indeed. So if we want that the different parts of Pakistan should stick together and be really welded into one common polity, then purely from the consideration of expediency, apart from faith, it is only necessary that this State should become Islamic so that the Islamic basis of unity of various people may be strengthened and the State may be united into a strong and lasting entity.

Now, Sir, I would proceed just to make a few remarks about what has been recommended in the Basic Principles Committee report. We are making Pakistan an Islamic State. The Preamble consists of the Objectives Resolution. The Preamble was really meant as a guide for framing the constitution. It was meant to give us ideas so that we can implement them by making complete recommendations. Now one obvious deduction from this Objectives Resolution is that Pakistan shall be an Islamic State. The words have not been used, but it is quite clear that the Objectives Resolution envisages an Islamic State. In the very first sentence it is said: That the State of Pakistan shall not have unlimited power as other foreign States have; but shall have only that power only within the limits prescribed by God. So, Sir, that at once imposes a restriction upon the powers of the State. That is, it is obvious, then, that the State cannot do anything or ordain anything which goes against the command of God. So far as the negative aspect of Islamic State is concerned, it is ensured by the first sentence of the Objectives Resolution. About the positive aspect of Islamic State the successive two and three clauses give us the information and I will read. It has been said that the principle of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed. These are our ideas and actions. The State shall be in this matter based upon Islam and the Muslims shall be enabled to order their lives, etc., etc....

I want to say a few words about this particular clause, because there is some misunderstanding about it. Some people think that "enabling" means just giving people the freedom to practise Islam. It has been said in other places also that "enabling" means just not putting any obstructions in the way of Muslims to practise their religion. Now, Sir, if this is the true interpretation of this clause, then may I respectfully submit that we are not going beyond Queen Victoria's Proclamation? Queen Victoria, in her famous Proclamation, when she assumed reins of Government over India as Empress, said this very thing that her beloved subjects, whether they be Hindus or Muslims, would be allowed to practise their religion freely. Is it seriously contended that we are really on the same level now as we were when Queen Victoria's Proclamation was published? Actually, this clause was explained very fully by the late Quaid-i-Millat on the day when the Objectives Resolution was passed. It was made clear at that time that "enabling" does not mean simply that there would be no obstructions in the way of Muslims practising Islam, but that the State shall actively take steps—all steps necessary—so that the Muslims can live the Islamic way of life and that all that is necessary would be done by the State to help them in the realisation of that ideal. Now, Sir, in spite of the fact that the Objectives Resolution clearly envisages an Islamic State, it has been nowhere said in the operative part of the Report—in the substantive, operative part of the report—that the State of Pakistan shall be an Islamic State. I would submit that we must draw the necessary conclusion from the Objectives Resolution and state it in the operative part of the Report that Pakistan shall be an Islamic State, or an Islamic Republic, or whatever you like to call it, because the Objectives Resolution itself, as you know, has got no legal effect.

Now the next chapter—Directive Principles of State Policy. No doubt very desirable provisions have been laid down under the Directive Principles and these provisions do envisage, do show a desire to make the State of Pakistan Islamic but Directive Principles of State Policy are not justiciable. They can have no legal effect. They are there as expressions of our ideals, or, as some people irreverently say, they are merely pious wishes. What we want is that the State does really become an Islamic

[His Excellency Dr. Omar Hayat Malik]

State. Has the Clause then any legal effect? Would it not be better to have something which has got a legal effect, which says in so many words that this State is Islamic. Now the only paragraph which will have a legal effect is clause 3 and that clause says that the State shall pass no law which is repugnant to the Quran and the Sunnah. No doubt this clause ensures the negative side of the Islamic State: that the State shall not do this and shall not do that; so to that extent it is very satisfactory, but, as you know, Sir, the efficacy of this clause will depend entirely upon its being implemented. Now in the earlier report of the Basic Principles Committee that was placed before us there was an elaborate procedure for implementing this clause. That procedure has been rejected by public opinion—by the Ulemas and by the non-Ulemas both—and therefore it is certain that this procedure will not be adopted. Now what is the alternative? Sir, let me say first of all that I have heard two different alternatives proposed in this connection: one is that if objection is taken to a law that it is against the Quran and the Sunnah, then it shall go back for decision to the Muslim members of Parliament that is to say the Muslim members of Parliament will be the Judges on the point whether the law is or is not against the Quran and the Sunnah. Sir, first of all, it does appear a bit anomalous that the body that framed the law in the first instance should, for all practical purposes, become also the judge in its own case. It does sound a little anomalous that a body framing a law to which objection is taken should decide whether it is or it is not against the Quran and the Sunnah, but, over and above this, I would like to point out that if that is done then, in effect, it will mean the relegation of this clause 3 also to one of the directive principles, a direction to Parliament: "Please do not make a law which goes against the Quran and the Sunnah"—just a direction against which there will be no legal remedy. Therefore, it is essential, Sir, that some method should be adopted which really and truly makes this clause effective and the only proposal that I have heard so far which I think can serve the purpose is that in case of a difference of opinion as to whether a law is or is not against the Holy Quran and the Sunnah the matter should be referred to the Supreme Court. Sir, I agree with it and I support it because matters of law should be judged by people, first of all, who are learned in the law, who understand law, who have got judicial minds, who can think judicially and not in any other manner and who are free from political influences. To ensure these three conditions we cannot think of a better body than the Supreme Court to undertake this task. It is said that there will be many difficulties, that vexatious litigation will be started, that mischievous litigation will be started by interested parties and the whole course of legislation will beset with so many difficulties that the thing will become impossible. Well, Sir, let me say that there will be difficulties or disputes—some difficulties there will be but I am sure that the difficulties are exaggerated. In the first instance, when it is laid down that all laws in dispute as to whether they are or they are not repugnant to the Quran and the Sunnah will go to the Supreme Court, the framers of the law—those who framed the law—will take very good care in advance that those laws are not against the Quran and the Sunnah. This is a point which I would like to emphasize. At present, when there is no bar on making laws whether they are or they are not Islamic, nobody cares, but when it is laid down in the constitution that no law against the Quran and the Sunnah will be passed, every one—the Law Department, the Honourable Mr. Brohi and his people and the individual members who want to bring such Bills before Parliament—every one will get legal opinion and ensure

himself that his labours will not ultimately be wasted. Every one will take care that the laws are not against Islam and therefore the difficulties will become less at the very outset.

Then, the second thing which has been suggested by several eminent lawyers among our friends here is that the Federal Court when the matter comes up before them, should not at once begin to take up the case, but should first consider whether leave for raising the objection can be given or not, whether a *prima facie* case exists or does not exist, for admitting the case for consideration. Now this is a very important thing, as in many cases the Court will come to the conclusion that there is nothing in the complaint, nothing in the objection raised and, therefore, it will dismiss summarily and the case will not be taken up at all. Thirdly, the process of interpretation of the law will by itself decrease the number of such cases arising gradually. After all, when the matters come up before the court, the law begins to be codified. Then naturally the number of doubtful cases will go on decreasing. Therefore, difficulty may be experienced more in the beginning, but it will gradually decrease. Then, Sir, as against these fears and objections to submit the disputed bills to the Supreme Court I would like to mention one or two advantages. The great advantage is that the process of *ijtihad* in Islamic matters, in Islamic law will be opened once more after a lapse of many centuries. Why has religion become fossilized? Religion all over the world has become a phenomenon, in the sense that religion comes with a Prophet and the Book. Then the prophet passes away and the Book is commented upon. When the commentaries are commented upon, there are new commentaries and so on, until in the end people forget the original source and get wedded and attached so much to the commentaries that they forget the real source. That is why the religion gets fossilized. The same process happened in Christianity; the same phenomenon appeared in Buddhism and perhaps, if I may so respectfully, the same thing took place in the case of Hinduism and the same process has occurred in Islam for hundreds of years. Now *ijtihad* has been banned and a class of people have arisen who think that *ijtihad* is sinful. We must adopt the interpretations which we made several hundred years ago. I do not say that they were not the final arbiters of what is meant or not meant by Quran and Sunnah. This is what is really called Mullaism. I do not know what it means when I hear it from the mouths of the detractors of the Islamic State, but I think this is Mullaism and this kind of Mullaism we must try to eradicate. Islam, we believe, is safe in the hands of God. True, but so far as our human intelligence goes, I think Sir, Islam cannot live as a vital force if the way of *ijtihad*, in the tone of *ijtihad* is once again not opened to Muslims. Islam claims that it is for all times and for all places. This is a very good and big claim. No other religion in the world has claimed that, but Islam claims it and we believe it. Now, Sir, how is it possible to imagine that a religion can adapt itself to the requirements of all times and of all places, without a continuous process of interpretation and re-interpretation? I do not think it is possible. If we want to make Islam live, we must have *ijtihad*. By making this provision in our constitution that matters in dispute about law from the point of view of Islam shall be referred to the Supreme Court is really opening the door of *ijtihad* once again after a lapse of centuries. I admit that this process or *ijtihad* in the beginning would be imperfect. We have not got the right type of men. The right type of men must have two qualifications. They must understand the Quran and Sunnah and they must understand also the modern conditions and the modern product. *Ijtihad* after all, means action and interaction of the laws of Islam upon actual conditions as they existed in different times and in different places. If a man understand

[His Excellency Dr. Omar Hayat Malik]

the real teachings of Islam, as also the requirements of any particular time and place, *ijtihad* is important. Such men unfortunately either do not exist in our country or are very few, but we have to make a beginning. We must make a beginning. It would be imperfect in the beginning, but as time goes on, if we so desire, we can create and develop a type of person that will suit in a matter like this. We can make a provision in Law Colleges, as Mr. Brohi proposed, so that this type of persons or this type of Muslims is generated, who have the capacity to understand what is given in the Quran and the Sunnah and also have the capacity of understanding the conditions as they obtain in the modern world and are applying the laws of Islam to modern conditions. So if we are serious and earnest in this task, we can in a decade or in 15 years' time gradually build up a type of men that will be suitable for carrying out *ijtihad*. Until then let it be open to our best Judges of the Supreme Court to take the advice and help of such people who know the law of Islam whether they belong to this country or other Muslim countries. They can even be allowed to have experts from other countries and their opinion can then be considered as evidence.

Another doubt raised about this question is that it will be an obstruction in the way of laws and it will create delays. One simple matter is that we can lay it down in the constitution that all laws shall remain in force and shall be valid until they are declared as against Islam. That is to say, this objection will be after the law is passed and the law will continue to be enforced until the judgment is adverse. We can even go further. We can say that the commitments, arrangements and engagements entered into under any law shall be given effect to even though that law has to be declared invalid on the ground of repugnancy to the Quran and the Sunnah. So, Sir, such conditions can be devised and it will remove the difficulties of law to a large extent and I think, Sir, submission to the Supreme Court is the only way in which clause 3 can be made effective and I hope this clause with provisions of the type I have mentioned will be accepted by this House.

Sir, I have taken quite a good deal of time, but I want to say a few things about certain other matters given in the Report and one of them is the Judiciary. Now, Sir, the Report says that the framers had actually attached very great amount of importance to Judiciary and had made provisions which would ensure the independence of Judges of our courts, but there are one or two things which I would like to point out which perhaps might make matters better. Now, in the Report it has been laid down that the Judges will be secure in regard to their salary and their travelling allowances and so on. It has also been provided that their appointment and dismissal will be in the absolute discretion of the Head of the State. This is for the good, but it is also provided further that the Judges after retirement will not be eligible for taking part in politics, or practising in courts, i.e., they will have no further incentive to become lawyers and so on.

But it has not been provided that they cannot hold any other office under the Federation or the Units. We should protect judges against two things: we must protect them against fear and also against temptation. Against fear the report I think has done a lot to safeguard their interest but against temptation the provision is not sufficient. Merely to say that they will not be allowed to practise in a court is not enough. We should say further that they will not be allowed to hold office under the Federation or the Provincial Governments.

Another point I want to raise in this connection relates to paragraph 196—the right of the Supreme Court to call for evidence, persons and documents has been curtailed to some extent by the provision that this will be subject to a federal law. It means that a federal law can be passed according to which the Supreme Court will not have the power of calling for evidence, persons and documents. This is a serious curtailment in the administration of justice and that clause should be amended.

Another point which I want to emphasise is that provision should be made that there will be no extraordinary courts in Pakistan, and that all cases shall come before ordinary courts. That is a very important provision and quite a number of constitutions provide expressly that there should not be any extraordinary courts. I can cite a few instances: there is the German constitution and there is the Mexican constitution. It is a very important thing. The Government of the day which is after all a political party in democratic country should not have special and extraordinary courts for special cases with special procedure and with special law of evidence which can work to the disadvantage of the people who have been brought before these courts. I attach a great importance to this matter. A separate provision should be made according to which extraordinary courts shall be forbidden.

Sir, the question of judiciary is such that we should literally leave no stone unturned in making the administration of justice as foolproof, if I may use that expression, as possible because the individual, after all, what is he interested in? It should not be possible for anybody to do injustice to him. To do justice to the individual is the highest function of a State. Only the other day in another place the Honourable Mr. Brohi mentioned an incident from Islamic history and this is a very instructive incident. He said that Hazrat Omar *Rad-e-yallaho anho* went to the court of a judge whom he had appointed himself. (By the way, Hazrat Omar was the first Khalifa who actually appointed the Kazis). Hazrat Omar went to the Kazi's court and the Kazi stood up to greet him. Hazrat Omar, instead of being pleased at the show of this courtesy dismissed the Kazi on the plea that he (Hazrat Omar) wanted the Kazis to be independent and by rising up for the Khalifa in the court he had demonstrated that he was not independent enough. Sir, we should have such incidents in our mind when we make provision about the independence of judges, as these are all cognate matters.

If you will permit me I will mention a short incident from German history as well which will have the same tenor. The Emperor Fredrick the Great who was a very powerful emperor, built for himself a grand palace which stands to this day in Potsdam in the neighbourhood of Berlin and called it *Saw-see-su*. It means: without care—care-free; *Aish Mahal*. Then Fredrick the Great began to live in that palace and unfortunately for him in the immediate neighbourhood of that palace there was a wind-mill belonging to a poor miller—a poor German miller who had inherited the mill from his forefathers. He worked the mill night and day to earn his livelihood by milling corn. The mill was pretty old and cranky and noise emanated from it which disturbed the emperor Fredrick the Great and he found that the palace *Saw-see-su* was not so care-free as he should have thought. He sent his men and asked the miller whether he could sell it. He stated that he was prepared to give a good price. The miller refused. After getting tired of it he sent for the miller himself and told: "Why don't you sell this mill? I am willing to give you a good price—more than you can fetch anywhere else. I am the emperor and you do not obey me." The miller said: "Your Majesty! I have inherited this mill from my father and forefathers and I shall never sell it. It is a family hairloom. It is not a question of money alone. I am

[His Excellency Dr. Omar Hayat Malik]

unable to part with it." Then the emperor got angry and said: "Don't you know I am the Emperor?" He said, "I know that you are the Emperor but I also know that there is Supreme Court sitting in Berlin—twelve miles from here—which you have appointed yourself. I have full confidence that that court will restore my right." And the King was very happy and he said: "I thank you very much for what you have said. You have paid me a compliment. I think you are perfectly right; however much I am inconvenienced in my sleep." That mill exists to this day and it is showed as a relic to the travellers.

I mentioned these instances to stress that in the matter of judiciary no loophole should be left which can permit injustice being done to the individual.

Now, Sir, just one or two things more and I have finished. A very important subject dealt with in the report is the question of elections. Elections are a most serious concern in a country and they have become all the more serious on account of recent history. I have not been in the country for three or four years. I do not know what has happened but there is no doubt that there is a great deal of dissatisfaction and suspicion among the people regarding the fairness of elections which we have held here, and this suspicion is not limited to our people. It is shared by foreigners abroad. I can assure you, Sir, that sometimes foreigners are more informed than ourselves about our affairs. In the foreign Press, and in talks and in hints more than talks—diplomats really do not talk much—in hints and talks I have noticed that our prestige in the outside world has gone down because of suspicion about our elections which we have held recently. On the contrary the prestige and reputation of India has risen very high on account of—among other factors. There are other factors also—that they could hold what is called the greatest democratic election in history in such a fair manner. It is most important that we should ensure by some means or the other that elections are held properly. We should use all means to ensure that the elections are fairly held.

If the elections are not held fairly and impartially there is no basis for democracy. There is no democracy. Then there is no democracy. It is a mere farce; it is worse than a farce; it is delusion. We must see now at least for the future that the events that have given rise to suspicions here and abroad are not repeated. I am very glad that the framers of the report seem to be aware of this and they have made certain provisions. They have given power to the Head of the State in his own discretion to appoint election commissioners so that the Head of the State who is supposed to be free from the influence of the political parties should appoint those men who are worthy of the task and trust. So I am glad that it seems the framers of the report are conscious of the importance of this question. But there are one or two things, I would like to suggest. One of them is that the Election Commissioners, although they will be appointed by the head of the state in his own discretion, have not been debarred from holding any further office under the Federal or the Provincial Governments. As I said earlier there are two things to be guarded against, fear and temptation. Both are dangerous factors. Election Commissioners apparently are in spite of the provisions subject to the temptation at the hands of the Government after they have retired from their office of Election Commissioners. It should be provided that they also, like the judges, shall not be eligible for any further office. Of course, it may be objected to on the ground that Election Commissioners are

perhaps temporary people and they will not be holding permanent jobs for fixed number of years, and if that is the objection then I would suggest that it would be worth while to make their jobs permanent for a fixed tenure, although they may not be busy for the whole time so that they are free from the temptation of being offered lucrative jobs after they have done the job of election.

Now, Sir, I will go a step further in this matter. I know this is something which might be considered very drastic, and by some people revolutionary. But nevertheless I seek your permission to make a proposal. I propose that we should provide in the constitution that three months before general election, whether it is at the Centre or in the Provinces, the Government shall resign and for these three months and during the course of the elections the reigns of Government will be in the hands of a care-taker Government which is so chosen as to ensure fair and impartial elections, so that it is not controlled by any party and has no interest in party politics. Well one method, which is of course the obvious one, is to give the Government to the Governor or the Governor General, but other methods could be found. We could have a set of people not from one party, who could be free from party influences. I believe, Sir, although we are appointing election commissioners and we are taking care to make them independent, this will not by itself ensure fair and free elections. Much depends on the Government of the day and if that Government is *Illa Mashallah** and if that Government is tempted to use its power, or may be tempted—I do not say they are so tempted or they have been so tempted but may be tempted—to use its power and the machinery they have at their disposal in helping themselves—this is exactly what has been said whether rightly or wrongly I do not venture to give any opinion, but it is said by many people about which I am not in a position to give any opinion. I do not know but many people here believe that Governments have been using their power for the sake of winning elections for their own party and perpetuating their own regimes. Therefore it is essential if you want elections to be fair in this country that the Government must resign, a certain period say three months, in advance of the elections so that they can be carried on with absolute fairness. This is a proposal which I humbly and respectfully submit for the consideration of this House. Now, Sir, I shall say a few words more on one or two topics and then finish. The topics which I want to discuss are education and defence. It is a strange thing that in the whole report the word 'education' occurs only once and that in the Directive Principles. It is provided in one of these principles that the 'state should endeavour to secure basic necessities of life..... education.....for those.....who are temporarily or permanently incapable of earning their livelihood.....'

Shri Dharendra Nath Dutta : There is another provision also.

His Excellency Dr. Omar Hayat Malik : Now it has been pointed out to me by my friend Mr. Kasem, and I was coming to it as a matter of fact, that in section 8 of the Directive Principles it is provided that the 'State should make every effort to remove illiteracy from the country within the minimum possible period'.

The Honourable Mr. A. K. Brohi (Sind : Muslim) : Technically you are right.

His Excellency Dr. Omar Hayat Malik : I am substantially right. Literacy is not education ; it is not synonymous with education. Actually the word education comes only in one place. If you say 'make people literate' then it does not mean that you educate them. It is quite a different thing. Now, Sir, it is very strange that after having said so many times when we got Pakistan, that in our sovereign independent

*Except as Good wishes.

[His Excellency Dr. Omar Hayat Malik]

State we must educate our people according to Islamic way of life, nothing has been said about education. It is conceded by all, and all members of the Government, and all Governments very generously that education is the first priority, but when it comes to implementation then we fight shy or feel shy and we do not fulfil this undertaking. I say it should have first priority. We have not even mentioned the word. At least, we should have said things about education at the very beginning. We should have said that free and compulsory education should be provided. It should be given effect to say within 10 or 15 years. I would rather say that. And then we should have certainly said further that the basis of education, the basis of the system of education, in so far as it applies to the Muslims shall be Islamic. This much at least must be said if we really want to make the State Islamic. This alone can yield results, because, Sir, the greatest weapon in the hands of an ideological State is education. There is no stronger, no better, no more suitable weapon for an ideological State than the system of education, and if the system of education is not based upon the ideology that the State professes then that ideology cannot succeed. It is strange that this thing should have been ignored. I suggest that this matter should be considered and these two provisions should be at least added. The third provision which I would like to be added is that education in all stages shall be free—not only compulsory primary education but education in all stages shall be free for all classes of people, Hindus, Muslims, Christians, Pars's, etc. (*Hear, Hear.*) This is certainly an Islamic concept of education. In Islamic tradition, nobody has ever thought of charging fees for education and, Sir, this is not a European idea. This is not just idealistic thing which is not known. It is being done by non-Islamic States even.

The Honourable Mr. A. K. Brohi: Ceylon, for instance. I would say Sweden, Mexico and Holland. There, I know from personal experience, these people have free education.

Mr. President: Have they provided that in their Constitutions?

Dr. Omar Hyat Malik: Pardon?

Mr. President: Have they provided that in their Constitutions also?

Dr. Omar Hyat Malik: Well, in Mexico, they have and by implication, I think, in Holland and by implication in Turkey also. Whether they have or have not, if we believe in the things that are better, this being a very important thing, very basic fundamental thing, it should be provided in the Constitution, because Constitution is meant for giving effect to the instructions or things which are fundamental.

Then, Sir, I shall deal with the last but very important topic—I have tried your patience too much,—and that is the question of Defence. Now, I strongly believe that situated as we are, we must realise that Pakistan is a country which is still in grave danger of extinction. I say this with the fullest responsibility and it is my view which I wish to put before you and that is why I said at the very outset that in making a Constitution we should apply our mind to the events that may follow in the future and one of these things is that we must build, or at least act upon the assumption that our country is not out of danger; on the other hand it still is, and things can happen and will happen which will raise an issue whether Pakistan is to live or is not to live. It is the opinion of many observers. I know they are people who are too complacent to believe in it, but many observers believe that Pakistan will still have to fight its third battle. The first battle was to get Pakistan; the second battle, Mr. Nurul Amin said the other day, is the fight for Islamic State and the third battle will be the battle for existence. A

time will come when we have to fight for our existence and, therefore, we must make provision against such an eventuality. We have our powerful neighbours, big neighbours, Russia, China and India. We have three thousand miles of common frontier with foreign countries which we have to defend. The question is : how can you undertake this gigantic task of defence in the best possible manner? I am one of those who believe that by having a standing army alone, we cannot fulfil this task in a proper manner and we must have a national army to supplement the standing army. Our resources are not enough for meeting our defence needs by means of the standing army alone and it is essential from now onwards to build up a national army. That is a proposition which should be laid down in the Constitution that military service shall be obligatory on all males between certain ages. This is also necessary from Islamic point of view, because Islam ordains that at least all Muslims should be prepared in defending their country and faith when they are in danger and this is one of the consequences of enabling the Muslims to live the Islamic way of life as laid down in the Islamic principles. Therefore, Sir, I recommend, I suggest that we should make a provision for it, have a clause in the Constitution that all males in Pakistan shall be liable for military service. Now, this might raise some doubts in certain minds and some fears in certain minds which may think that we are going altruistic ; in fact, Sir, several countries of the world have got this provision in their constitution and nobody has thought about them that they are altruistic. Switzerland is one example, Norway is another and there are so many other countries who have provided quite openly that they will prepare their citizens for defending their country in time of need. As I have said, in our case, there is still greater reason for having a provision like this because it is the duty of the Islamic State to prepare Muslims for defending their country and their faith. Without the provision, we might have to face the third battle for Pakistan without proper equipment and we might run the risk which we all wish to avoid.

Now, Sir, with these few words, I thank you for your patience and resume my seat.

Mr. Abul Kasem Khan (East Bengal : Muslim) : Sir, the time is very short ; so I shall not be able to finish my speech. I am afraid, I will have to continue tomorrow.

Sir, it is somewhat gratifying to find that after a lapse of nearly six years, we are now embarking on the task of drawing up our Constitution. The delay has been really inordinate and to my mind much of it is inexcusable. Sir, constitution-making could wait, but many far less important things could not wait. The patience of the country is nearly exhausted. Of course, I know it is no use at this late hour trying to analyse the various causes that, rightly or wrongly, contributed to the delay, but I again repeat that the delay has been inexcusable. Sir, I do not like to point my accusing finger to anyone, but I must say that the country is so impatient that this task which Providence had entrusted to us, cannot brook any more delay. I am glad that the extreme urgency of the situation has been realised and a sense of great urgency prevails in our deliberations now-a-days. And I hope, all Members of this House will see that we can finish this Constitution and present it for whatever it is worth, to the country as early as possible. Let there be no difference on that point ; let there be no delaying tactics any more from any quarter, and if there is any, I am sure the country is not going to tolerate it.

[Mr. Abul Kasem Khan]

Sir, as I said, this is a sacred task that Providence had entrusted to us. We should not approach this task in a partisan spirit and not in a spirit of bargaining for unfair advantage over any section or any community. This constitution-making is a chance that comes to a nation once in a life-time and this is a task which we cannot afford to fail because if it fails, Pakistan fails and your future generations are not going to excuse us very lightly for it. Failure here might be very costly to the nation as a whole. So, Sir, I pray to God Almighty that we may approach this task with all humility, with a deep sense of realisation of our responsibility to the country, and with a prayer on our lips that by our actions, by our provisions, we may do no injustice to anyone, we may not be unfair to anyone, we may give no unfair treatment to any part of the country, to any community or to any section of our people. That should be the constant prayer and the constant motto before us which we should bear in mind in all our deliberations. Sir, at the outset I should like to stress one fact which to my mind has an important bearing on all the deliberations before us, *viz.*, the unique nature of our country. Our country is really unique in many ways and so our problems also are bound to be unique. Have you ever read in any history that a large population of a democratic country live in a wing which is separated from the other wing by more than a thousand miles of a foreign territory. I do not know at least of any democracy. This geographical factor alone poses a big challenge to our intelligence and to our statesmanship. It would be idle to think that any stereotyped political institutions borrowed from any of the advanced countries of the world will meet our requirements. They will not. If you want to transplant any political institution in Pakistan either from America or from even any of the Communist countries, I am dead sure in my mind that this plant will not take root in the soil of Pakistan and will wither away very soon. So, Sir, as I have already said that our problems being unique, the solution also must be unique and we must prepare our mind to face this unique situation with all ingenuity and intelligence that we can command. But the situation is not so desperate as to cause really anxiety because inspite of our many difficulties on the score of language, habits and customs, there is a transcending unity in the nation, the unity of purpose, the unity of common object—the very determination of the people to live as one nation which transcends all barriers of geography, language, habits and customs and that is the thing which inspires confidence when I say that Pakistan is going to be a great nation for all time to come. That unity of purpose is much bigger than the barriers of geography and language.

Sir, the first point I would like to mention—I do not think I have sufficient time today for that purpose—is that and I do not think there can be any two opinions that we are attempting to lay the foundations of a democratic constitution in this country. We all agree as my learned friend Dr. Omar Hayat Malik said that we aim at democracy, to be more precise—an Islamic democracy. Democracy I think will suit the genius of our people as Islam means democracy. Sir, as if Islam is essentially democratic our people should have a natural aptitude for democracy. But, Sir, I will also mention at the same time that this is a big assumption in an illiterate country where the percentage of literacy is about 10 per cent. As I have already said democracy is a tender plant that is to be nourished and fed on various delicate things like tolerance, equality, connection, social justice, etc. If we want that democracy should really flourish in this country, we must make sure that we are preparing the ground for democracy. It is no use throwing a seed in desert when we know it is not going to take roots. So I say

and I will soon come to the various other considerations which I think essential for preparing the ground for making the soil ready for taking the seed of democracy. But I want to point out that when we are committed to democracy, there can be no going back. We have set our soils and the course is set for us. The task is very difficult I know. Sir, when I resume my speech tomorrow, I will indicate the various things which are considered essential for democracy to take roots and to flourish. If you will permit me now, I will take my seat and stop here.

Mr. President: I am sorry to announce that today also the House cannot meet in the afternoon for certain reasons. I, therefore, propose that from tomorrow onwards the House will sit twice, in the morning and in the afternoon. I also hope that the debate may close day-after-tomorrow. The motion now under discussion may possibly be put to vote day-after-tomorrow either in the morning or in the afternoon.

The House stands adjourned till 11 a.m. tomorrow.

The Assembly then adjourned till Eleven of the Clock, in the Morning, on Thursday, the 22nd October, 1953.

LIST OF AGENTS IN PAKISTAN AND ABROAD FROM WHOM GOVERNMENT OF PAKISTAN PUBLICATIONS ARE AVAILABLE

I.—INLAND

1. PROVINCIAL GOVERNMENT BOOK DEPOTS :—

North-West Frontier Province :—

Manager, Government Printing and Stationery, N.-W. F. P., Peshawar.

Sind :—

Superintendent Sind Government Book Depot and Record Office, Karachi,
(Saddar).

Punjab :—

Superintendent, Government Printing Punjab, Lahore.

2. PRIVATE BOOK-SELLERS :—

East Bengal :—

Messrs. The Pak. Co-operative Book Society Ltd., Chittagong.

Messrs. Kohinoor Library, Ander-kill, Chittagong.

Messrs. Burhani Paper Mart, 11, Bangla Bazar, Dacca.

Messrs. Qazi Khurshid Mustafa, 23, Rajani Choudhry Road, Gandaria, Dacca.

North-West Frontier Province :—

Messrs. Ferozsons, 35, The Mall, Peshawar.

Karachi :—

Messrs. Aero Stores, 170, Napier Road, Karachi.

Messrs. Ferozsons, Bunder Road, Karachi.

Messrs. Kitabistan. Ltd., 18, Hotel Metropole, Victoria Road, Karachi.

Messrs. Pioneer Paper and Stationery House, 1, Avan Lodge, Opp. Dow
Medical College, Bunder Road, Karachi.

Messrs. Windsor Book Stall, Elphinstone Street, Karachi.

Messrs. Burhani Paper Mart, Campbell Street, P. O. Box 26, Karachi.

Messrs. Pakistan Law House, opposite Small Causes Court, Wadhmal
Odharam Road, Karachi.

Messrs. The Bookland, Bunder Road, Karachi.

Sind :—

Messrs. Educational Book Depot, Stationers and Book-sellers, School Road,
Hyderabad, Sind.

Punjab :—

Messrs. Danishmand & Co., Karkhana Bazar, Lyallpur.

Messrs. Ferozsons, The Mall, Lahore.

Messrs. The Punjab Religious Book Society Anarkali, Lahore.

Messrs. Nawai Waqt Publications, Ltd., Lahore.

Messrs. Manzoor & Co. (Pak.), Ltd., 6, The Mall, Lahore.

Messrs. A. M. John & Co., Kutchery Road, P. B. No. 297, Lahore.

Messrs. The Publishers United Ltd., 176, Anarkali, Lahore.

Messrs. International Agency, Gujar Basti, Lyallpur.

Messrs. Mirza Book Agency, 20, Mayo Road, Lahore.

II.—FOREIGN

The Ambassador of Pakistan Kabul c/o. Post Master Peshawar.

The High Commissioner for Pakistan in Australia, Dalton House 115, Pitt
Street, Sydney, Australia.

The Ambassador of Pakistan, Rander House Phavre Street, Rangoon Burmah.

The High Commissioner for Pakistan 499, Wilbord Street, Ottawa, Canada.

The Embassy of Pakistan, Pakistan House, 11, Sharia Hodel Laban, Garden
City, Cairo, Egypt.

The High Commissioner for Pakistan, 8, B. Hardinge Avenue, New Delhi.

The Embassy of Pakistan in 15, Dialan Tanku Umar, Diakarta.

The Embassy of Pakistan, Khiaban Takhte Jamshed Kashi No. 276, Tehran,
Iran.

The Embassy of Pakistan, Wazirva Baghdad, Iraq.

The Legation of Pakistan, Jedda, Saudi Arabia.

The Minister of Pakistan Abu Roumanch Damascus.

The Ambassador of Pakistan, 41, Karanfil Sokaka, Yanisehir, Ankara, Turkey.

The High Commissioner for Pakistan, 34/36, Lowndes Square, London, S. W. 1.

The Ambassador of Pakistan, 2201. R. Street, North-West Washington, D. C.,
U. S. A.

The Embassy of Pakistan, 17, Sadovekudrinskava Street, Moscow, U. S. S. R.

The Ambassador of Pakistan 18, Rue Lord Byron, Paris, France

The Embassy of Pakistan, Plie 1813, No. 3, The Hauge, Netherlands.

The Minister of Pakistan, 15, Via Guisenpe Mangili, Rome, Italy.

Copies of the Acts, White Papers, Pamphlets and the Debates of the Constituent Assembly (Legislature) and the Constituent Assembly of Pakistan are obtainable on sale from the Manager of Publications, Government of Pakistan, Karachi.

Copies of Debates are available for 5 annas or 8d. or 10 cents. each.
